Supreme Court, U. S.
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In the Supreme Court of the United States

No. 79-633

COUNTY OF VENTURA,

Petitioner,

v.

RUDY CASTRO, JR.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

RESPONDENT'S BRIEF IN OPPOSITION

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In the Supreme Court of the United States

October Term, 1979
No. 70-633

COUNTY OF VENTURA,

Petitioner,

RUDY CASTRO, JR.,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION

INTRODUCTION

Respondent RUDY CASTRO, JR. hereby respectfully requests that this court deny the petition for Writ of Certiorari, seeking review of the judgment of the Court of Appeal of the State of California.

Respondent agrees with petitioner's introductory statements under the items entitled, "Opinion Below," "Jurisdiction," "Constitutional Provisions Involved," "Statutory Provisions Involved," and "Statement of the Case."

Respondent does not agree with petitioner's statement under the heading, "Question Presented."

QUESTION PRESENTED

Is California Welfare and Institutions Code § 11476.1, unconstitutional in authorizing the entry of a judgment of paternity, or of paternity and for periodic child support payments, or for periodic child support payments only, pursuant to a stipulation or agreement between an alleged non-custodial parent and the District Attorney, because it will deprive that alleged parent of personal property, and may deprive him of his freedom, without notice and hearing, and with inadequate safeguards to assure that his rights are voluntarily, knowingly and intelligently waived?

REASONS WHY A WRIT OF CERTIORARI SHOULD BE DENIED

INTRODUCTION

The Court of Appeal of the State of California properly held that California Welfare and Institutions Code § 11476.1 is unconstitutional, because it denies a person, such as respondent, his due process rights to notice and hearing prior to the entry of a judgment against him.

Because the statute contains absolutely no provision for notice of entry of judgment prior to the fact of entry, nor an opportunity for a hearing prior to that entry, and because the statute provides no means to assure that the obligor has made a voluntary, knowing, and intelligent waiver, it is an abridgement of due process rights.

Therefore, the Court of Appeal of the State of California properly ruled that the statute is unconstitutional, and furthermore, the Supreme Court of the State of California acted properly in denying the Petition for Hearing on July 19, 1979.

REASONS

A. The Decision of the California Court of Appeal Is not Inconsistent with the Decision of this Court in *Overmeyer v. Frick*, Which Held that a Confession of Judgment Is not Per Se Unconstitutional.

In deciding the case that is now before this court, the California Court of Appeal followed the reasoning of the California Supreme Court in the case of *Isbell v. County of Sonoma* (1978) 21 Cal.3d 61, 577 P.2d 188, 135 Cal. Rptr. 368, *cert. denied* (1978) 439 U.S. 996. The California Supreme Court in *Isbell* concluded that the California confession of judgment statutes do not permit a pre-judgment judicial determination of the validity of the debtor's waiver, but instead, required the clerk to enter judgment upon a document which is ordinarily insufficient to demonstrate a valid waiver. The California Supreme Court in deciding *Isbell*, applied the reasoning of this court in *D. H. Overmeyer Co. v. Frick Co.* (1972) 405 U.S. 174, which stated:

> "Our holding, of course, is not controlling precedent for other facts in other cases. For example, where the contract is one of adhesion, where there is great disparity in bargaining power, and where the debtor received nothing for the cognovit provision, other legal consequences may ensue. 405 U.S. 188.

The court in *Isbell* reviewed the background of the California confession of judgment statutes, and looked into the circumstances of the transaction, and it clearly appeared that the contract was one of adhesion, there was great disparity in bargaining power between the parties, and the debtor received nothing in exchange for the cognovit provision. Furthermore, the situation in *Isbell*

was not a commercial transaction, such as that which was ruled upon in *Overmeyer*.

Obvious differences between the Ohio procedure before this court in *Overmeyer* and the California procedure reviewed in *Isbell* are that the Ohio procedure provides for notice of entry of the judgment and for a post-judgment hearing at which the defendant can vacate the judgment if a valid defense exists.

The California Court of Appeal, in the case before the court, followed the guidelines set forth by this court in *Overmeyer*, as well as the reasoning of the California Supreme Court in *Isbell*. Welfare and Institutions Code § 11476.1 provides no protection for due process rights of the alleged non-custodial parent, and it does not address the issue of the manner in which he shall be permitted to waive those rights; nor is there any requirement that he be informed that he has the right to trial on the issues of paternity and his obligation to support the minor child. There was certainly no equality of bargaining power, contrary to the situation of the parties in *Overmeyer*, and in effect, the contract was one of adhesion.[1] Respondent, summoned into the office and machinery of the District Attorney's office, stood on a far different footing with

[1] "In the instant case, the agreement was entered into between a lay person and an employee of the office of the District Attorney. The declaration of defendant that at the time of the discussion with Ms. Hickman he believed that he could be sent to jail for refusal to sign the agreement, and believed that refusal to sign the agreement would result in 'dire consequences' is, of course, uncontradicted in the record and eminently reasonable. It is common knowledge that the District Attorney's office prosecutes criminal cases. We would be blinding ourselves to reality if we were to presume that an agreement such as the one in the case at bar was voluntarily executed, in the absence of some express evidence of that fact." *County of Ventura v. Castro* (1979) 93 Cal. App.3d 462, 156 Cal. Rptr. 66.

respect to the creditor than did *Overmeyer*, a corporation with subsidiaries spreading across thirty states, and represented by corporate counsel at the time of the negotiations.

Furthermore, California Welfare and Institutions Code § 11476.1 leaves no discretion to the clerk or the judge to inquire into the circumstances of the signing of the document. That statute states, in part, ". . . the clerk shall file the agreement . . . . The court shall enter judgment thereon without action . . . ." There is no pre-judgment procedure, nor even a post-judgment procedure, to enable the court to examine the validity of the waiver, and to determine whether it was a voluntary, knowing and intelligent waiver.

For the foregoing reason, the ruling of the California Court of Appeal in this case is consistent with this court in *Overmeyer v. Frick*, and the petition for a writ of certiorari should be denied.

B. There Is No Real Conflict Among the Lower Courts on the Proper Application of *Overmeyer v. Frick.*

The cases cited by petitioner at page 19 of its brief, as being consistent with *Overmeyer v. Frick,* involved situations where the statute either provided for notice of entry of judgment and an opportunity for post-judgment hearing on valid defenses, or were cases dealing with execution and garnishment procedures arising out of confessed judgments, in which the question of the validity of the confession of judgment procedure itself was not expressly before the court.

In contrast, the court in *Osmond v. Spence* (D. Del. 1971) 327 F. Supp. 1349, dealt with a statutory proce-

dure which provided for no notice of entry of judgment and no opportunity for a post-judgment hearing of a valid defense. While the court in that case indicated that notice of entry of judgment should precede entry of final judgment the actual holding is limited to a finding that the statutes are unconstitutional based on the total absence of notice of entry of judgment and opportunity for a hearing at any time. Furthermore, the court in *Osmond v. Spence* did not void all prior judgments by confession, but required only procedures allowing judgment debtors with a valid defense to apply for a hearing. Similarly, the California Supreme Court in *Isbell, supra,* did not invalidate all prior judgments by confession, but required that judgment debtors with a valid defense be allowed to apply for a hearing.

The case of *Virgin Islands National Bank v. Tropical Ventures, Inc.,* (D.V.I 1973) 358 F. Supp. 1203, involved a federal court action which had been filed but in which defendant did not appear. The court required that before that plaintiff's attorney was allowed to have a judgment entered on a confession of judgment, he was required to notify the defendants of an opportunity to challenge the waiver of constitutional rights. The case is of little value as a precedent in the cases in which a statutory confession of judgment procedure exists.

It therefore appears that the only cases in which statutory procedures have been ruled unconstitutional are *Osmond,* as that case now before the court, in which no provisions for either a pre-judgment hearing or a post-judgment hearing are made. These cases are therefore not inconsistent with *Overmeyer* or the other lower court cases referred to by petitioner.

C. The Cases Cited by Petitioner to Support Its Claim Involved Ordinary Commercial Transactions Instead of Fundamental Rights and Obligations of Paternity and Support, Which Should Be Entitled to a Higher Degree of Protection.

Overmeyer v. Frick states:

> "Our holding, of course, is not controlling precedent for other facts in other cases." (405 U.S., p. 188).

The facts in the case now before the court and the facts in *Overmeyer v. Frick,* dealing as it did with an ordinary commercial transaction, are quite different.

Respondent contends that a person such as respondent whose legal status as a non-parent will be changed into that of a parent merely upon the signing of a piece of paper with all the consequences of the creation of that status, which will affect him for years, is deserving of greater protection, and the transaction should be subjected to greater scrutiny, than that afforded by Welfare and Institutions Code § 11476.1.

As examples of the affect of his status as a parent, respondent's relationship of paternity and the obligations created thereby may not be terminated by bankruptcy. They will continue until the child reaches the age of 18, and possibly even longer (California Civil Code §§ 196 and 206). The failure of the parent to support the child may well subject him to wage garnishment, execution upon property, civil contempt (California Civil Code § 196[a]), and criminal non-support, with the attendant possibilities of fine and imprisonment (California Penal Code § 270).

Futhermore, in a paternity suit, the defendant is entitled to engage in extensive pre-trial discovery (California Code of Civil Procedure §§ 2016 *et seq.*), is entitled to demand and require that the parties and the child submit to blood tests (California Evidence Code § 893), the right to call and cross-examine witnesses (California Code of Civil Procedure § 607), and the right to a trial by jury (California Constitution Article VI, Section 11; California Code of Civil Procedure § 904). All of these rights are lost when a person, such as respondent, signs the agreement that was presented to him by the District Attorney's office, and there is no requirement that he even be advised of their existence.

The California Supreme Court has held that in paternity matters the interests involved are fundamental and entitled to a high degree of protection. In the consolidated cases of *Salas v. Cortez and David M. v. Castellanos* (1979) 24 Cal. 3d 22, 593 Pac. 2d 226, 154 Cal. Rptr. 529, in which that court declared that indigent defendants in civil paternity actions are entitled to court-appointed counsel, it was stated:

> "The cases before this court involve more than monetary judgments. They were brought under statutory authority to declare the existence of the most basic biological relationship, that of parent and child. (Welf. & Inst. Code §§ 11350.1, 11475.1; Civ. Code §§ 7001, 7006; cf. *Boddie v. Connecticut, supra,* 401 U.S. at p. 383). A determination of paternity has grave implications for all concerned — the alleged father, the child, the mother, and the state. This court has termed the interest in maintaining a parent-child relationship "a compelling one, ranked among the most basic of civil rights . . . ." (In re B.G. [1974] 11 Cal. 3d 679, 688; *Cleaver v. Wilcox, supra,* 499 F.2d at p. 945). Freedom from an incorrect imposition of that relationship on either a parent or a child is an equally compelling interest . . . . An adjudication of paternity may profoundly affect a person's life. It may disrupt an established family, and damage reputations. Further, a court's determination of paternity exposes a defendant to deprivation of property, and, potentially, liberty." 154 Cal. Rptr. at 533.

In contrast, *Overmeyer,* a large corporation, was attempting to avoid liability on a money judgment which it had agreed to, with the assistance of its own attorneys, and no "compelling" or "fundamental" rights were involved. What is at stake here is not only the alleged father's right to an opportunity to be fully informed about the nature and consequences of signing the agreement presented to him, but also the right of the child to an accurate determination of paternity. Those consolidated cases of *Salas v. Cortez and David M. v. Castellanos,* Op. Cit. stated this right as follows:

> "The child, to a large extent forgotten in such proceedings, has been termed the "principal plaintiff" in a paternity action (*Krauss, supra,* p. 108). In a sense, it is the child's identity that is litigated in a proceeding to determine parentage. Any determination that a particular individual is a child's biological father may have profound sociological and psychological ramifications. Further, the child's rights of support and inheritance against the father are at issue, as well as his or her future obligation to support the father (Civ. Code § 206). "If the child is to have

> anything, it must have a *right* to have his paternity ascertained in a fair and efficient manner" (*Krause, supra,* p. 113, emphasis in original). It is in the child's interest not only to have it adjudicated that *some* man is his or her father and thus liable for support, but to have some assurance that the correct person has been so identified. When the state initiates paternity proceedings, whether on behalf of the mother (as in *Salas v. Cortez*) or the child (as in *David M. v. Castellanos*), the state owes it to the child to ensure that an accurate determination of parentage will be made." 154 Cal. Rptr. at 537.

All of the foregoing apply equally to the circumstances in this case. Because the statute requires the judge and clerk to enter a judgment of paternity based upon the written agreement, without any assurance that respondent's fundamental rights of notice and hearing are voluntarily, knowingly, and intelligently waived, and indeed, without any assurance that there is a factual basis for a finding of paternity, the statute violates such person's Fourteenth Amendment rights.

D. It Readily Appears from the Opinion of the Court of Appeal Below that Respondent Did Not in Fact Voluntarily, Knowingly and Intelligently Waive his Due Process Rights when he Signed the Agreement in Question.

Petitioner claims that, in effect, by signing the agreement for judgment, the respondent voluntarily, knowingly, and intelligently waived his due process rights. It is true that the printed form constituting the agreement stated that the District Attorney did not represent him, that he understood that he had an opportunity to have an attorney

to advise him, and that a judgment would be entered against him. However, many of respondent's legal rights, which the agreement did *not* state, and all of which go to the question of whether, in their absence, it can reasonably be said that respondent voluntarily, knowingly, and intelligently waived his due process rights are listed below:

1. That no law required him to sign the agreement at that time and place, and that no criminal consequences would follow his failure to do so.

2. That if he failed to sign the agreement, the District Attorney, to proceed against him further, must file a civil summons and complaint.

3. That if such a civil complaint were filed and served on him, he would have thirty days thereafter within which to file a written answer denying the allegations.

4. That he would have the right to ask for a jury trial, which would take place at some later date.

5. That during the course of the proceedings he would have the right to take the deposition of the mother, conduct discovery by written interrogatories, and to take the depositions of other witnesses.

6. That he would have the right to demand that the mother and child submit to blood tests to determine paternity or non-paternity.

7. That at all stages of the proceedings he had the right to have an attorney of his own choice represent him.

8. That at a trial, he would have the right to call and cross-examine witnesses against him.

9. That if the judgment of the judge or jury were against him, he would have the right to appeal.

10. That any civil support obligation made against him could not be discharged in bankruptcy.

11. That the child support obligation could be enforced by garnishment, execution on real or personal property, by civil contempt, and by criminal proceedings for non-support, with the possible penalties of fine and imprisonment.

Petitioner does not contend that these rights were explained to respondent. It is obvious that a layman, such as respondent, cannot be presumed to understand that the foregoing rights exist, by signing a piece of paper that merely states that a "judgment will be entered based on the agreement."

Petitioner also argues that an agreement under Welfare and Institutions Code § 11476.1 is indeed functionally a bilateral stipulation for entry of judgment, with benefits for both parties. It is difficult to find any benefit to respondent that arose out of the agreement. If respondent and the District Attorney were more equally balanced in terms of bargaining power, there might be some plausibility to petitioner's statements that:

> "A defendant clearly receives benefits by entering into such an agreement, in addition to the obvious saving of time and expense. The defendant may be able to negotiate a lower child support payment, than would be ordered if the case were litigated." (Petition for Writ of Certiorari, p. 23)

But nowhere does the petitioner state that respondent was in fact able to negotiate a lower child support payment. And, as the opinion of the Court of Appeal in this case states at page 36 of petitioner's brief:

> "The declaration of defendant that at the time of the discussion with Ms. Hickman he believed he could be sent to jail for refusal to sign the agreement and believed that refusal to sign the agreement would result in "dire consequences", is, of course, uncontradicted in the record and eminently reasonable."

For these reasons, respondent contends that the result in this case would have been the same had the Court of Appeal decided whether respondent in fact voluntarily, knowingly and intelligently waived his rights, because it is clear from the record that he did not.

CONCLUSION

Petitioner seeks to place before the court statistics that were not in evidence at the hearing of this matter, concerning the quantity of paternity and child support files in Los Angeles County. Respondent does not dispute that a ruling in his favor may have consequences in other cases, but the consequences are salutary, namely, that persons such as respondent, who did not understand the nature and consequences of their action in signing an agreement for the entry of a judgment of paternity, or for paternity and child support payments, or for child support payments only, against them, will have the opportunity to have the judgments entered on those agreements set aside, and an opportunity to have a trial on the merits, if they so desire. If only one person is properly determined not to be the father of a child, as a result of the decision against the constitutionality of Welfare and Institutions Code § 11476.1, then justice will have been served.

As the California Supreme Court stated in *Salas, supra:*

> "The state's interests in denying counsel to indigent paternity defendants is largely financial. Respondents argue it will require a greater

> expenditure of public funds if indigent defendants, as well as plaintiffs, are represented at public expense. In addition, it may become more difficult to identify potential fathers and establish paternity, if defendants have the full benefits of the adversary system. However, the state has no legitimate interest in incorrectly ascribing parentage and imposing the obligations of fatherhood on someone other than the child's actual father." (*Op. cit.*, 154 Cal. Rptr. at 536.)

The statute in question was not "lightly discarded" by the court, as petitioner claims. On the contrary, the California Court of Appeal properly ruled that the procedure concerned, under the circumstances presented in this case, violates the Fourteenth Amendment due process rights that are afforded to all persons by our Constitution. The decision is in accord with the principles set forth in this court in *Overmeyer v. Frick,* and as a result, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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